IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.69 OF 2003
AND CRIMINAL MISC. APPLICATION NO. 267 OF 2003.
CONVERTED TO CRIMINAL REV. APPLN NO.63/2003.

Shri Chandrashekar Y.
Bandekar, resident of
Colmorod, Navelim,
Salcete, Goa. ... Appellant.

VERSUS

1. Smt. Anandi A. Naik,
   B-5, P.H.E. Quarters,
   Borda, Margao, Goa.

2. State
   (Through P.P.,
   High Court, Panaji, Goa.) ... Respondents.

Mr. P.K. Gude, Advocate for the Appellant.

CORAM: A.M. KHANWILKAR, J.

DATE: 5TH DECEMBER, 2003.

ORAL ORDER:

Heard.

2. Learned counsel fairly submits that these proceedings have been wrongly filed as Criminal Appeal instead of filing Criminal Revision Application under Cr.P.C. In the circumstances, request is made for permission to convert this appeal into revision application. That permission is granted. Amendment to be carried out in the course of the day.

3. Insofar as merits is concerned, the first

contention advanced on behalf of the applicant is that there is gross irregularity in the proceedings as the statutory notice was not served on the applicant namely the drawer of the cheque. Whereas the same was served on his wife which is not a good service nor substantial compliance of statutory requirement of Section 138 of the Negotiable Instruments Act. This aspect, however, to my mind, has been carefully considered by both the Courts below. It will be useful to advert to paragraph 8 of the impugned judgment. To my mind no fault can be found either with the approach or the reasons that weighed with the Court below in rejecting this contention.

4. The next argument canvassed before me is that the Courts below have not properly appreciated the evidence to ascertain as to whether the burden of proof has been discharged by the complainant. This submission clearly overlooks that the present proceedings is revision application. The scope of revision is circumscribed. It is not open for this Court to re-appreciate the evidence, so as to take a different view, merely because another view is possible. Moreover, this contention also overlooks the consequence of legal presumption under the provisions of the Negotiable Instruments Act. The

question of requiring the complainant to prove beyond reasonable doubt does not arise in view of the said legal presumption.

5. In the circumstances, I find no substance in this revision application. Learned counsel however vehemently submits that even other contentions may be available to the applicant. However, the above referred were the only two contentions canvassed before me and I find no substance in either of these contentions. Hence dismissed.

6. At this stage, learned counsel submits that at least the time to pay the amount given by the Courts below be extended. As the respondents are not before this Court, ordinarily this Court would not have entertained this request. However, instead of issuing notice to the respondents for this limited purpose, I would instead grant only six weeks further time to the applicant from today for complying with the Order of the Court below. It is made clear that if the respondents have any objection to grant six weeks further time to the applicant, they may approach this Court for recalling this part of the

Order, which request will be considered appropriately.

sl. A.M. KHANWILKAR, J.